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Cc: []

Bcc: []

From: CN=Erin Foresman/OU=R9/O=USEPA/C=US

Sent: Thur 12/27/2012 7:48:26 PM

Subject: v. interesting ... Watermaster's report on Term 91

Report Summary: Term 91 and Delta flow requirements

20. December 2012

2 comments

Report Summary

Water

Central Valley Project

Delta

Delta Watermaster

State Water Project

State Water Resources Control Board

water quality

Delta by DWR

State Water Resources Control Board (State Water Board)

Bay-Delta Water Quality Control Plan

Delta Watermaster

Term 91: Stored Water Bypass Requirements

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It would be very easy to miss this so I'm highlighting it for all of you. Tom and Karen, was something like this discussed during CALFED? I seem to recall Tom mentioning a discussion about how to more evenly bear the water cost of improving freshwater flow through the Delta. I'll download the Water Masters report and you can to if you go to the link. Otherwise, just read the content below.

<http://mavensnotebook.com/2012/12/20/report-summary-term-91-and-delta-flow-requirements/>

Report Summary: Term 91 and Delta flow requirements

20. December 2012 · 2 comments · Categories: Report Summary, Water · Tags: Central Valley Project, Delta, Delta Watermaster, State Water Project, State Water Resources Control Board, water quality

Photo of the Delta by the Department of Water Resources

The State Water Resources Control Board (State Water Board) is required by law to establish flow and water quality objectives that ensure the reasonable protection of beneficial uses. With the revision of the Bay-Delta Water Quality Control Plan underway, and even the State Water Board itself admitting in a 2010 report, "The best available science suggests that current flows are insufficient to protect public trust resources," it appears highly likely that the State Water Board will modify the Delta's flow requirements. Where will that water come from? Craig Wilson, Delta Watermaster, suggests a potential solution, at least in part, in his latest informational report, Term 91: Stored Water Bypass Requirements. Many of California's water projects, such as the Central Valley Project and the State Water Project, store water in upstream reservoirs that is released as needed for beneficial uses. When natural flows are insufficient, the Projects are required by the State Water Board to release stored water to meet water quality standards downstream.

Term 91 is a provision included in many water permits that restricts specified post-1965 permittees from diverting the stored water released by the Projects when natural and abandoned flows in the Delta are insufficient to meet water quality standards and the Projects are supplementing flows with previously stored water to meet those standards. The primary intent of the provision is to ensure that Project water being released to meet water quality standards is not diverted for other uses, thereby allowing the water to flow through the Delta to improve water quality. Term 91 is designed to share the responsibility with specified junior diverters, as without Term 91 conditions, those diverters could take the water being released to meet standards, thereby forcing the Projects to release more water in order to satisfy their obligations to meet water quality standards.

However, Term 91 only applies to certain post-1965 permits. There are hundreds of permits and licenses that do not contain Term 91 provisions, such as upstream Delta diverters who possess pre-1914 appropriations, riparian water right holders, or those with permits and licenses issued before 1965. While the priority of the Project's water rights may be junior to those of the downstream diverters, the rule of priority only applies to natural and abandoned flows. A 2006 court case that addressed the stored bypass issue supports this position; in authoring the decision for *El Dorado Irrigation District v. State Water Resources Control Board* (142 Cal. App. 4th 93, 48 Cal. Rptr. 3d 468, Sept. 2006), Justice Ronald Robie wrote: "Supplemental water released from storage by the Projects is not available for others to appropriate and is not available to riparian right holders, since it is not natural flow. No riparian or appropriator has a right to use water that was previously stored or imported by another upstream and then released into the watercourse for use."

The report argues that the State Water Board has the appropriate authority to apply Term 91 conditions

to other water right permits: "Broader application of diversion curtailment conditions on water rights that exist downstream of water supply reservoirs is an appropriate exercise of the State Water Board's authority where the reservoir operation is required to release or bypass stored water to meet downstream flow requirements. Given the legal requirement that a valid water right does not allow the holder to divert water that has been stored upstream and released after seasonal storage, it can be fairly argued that Term 91-like conditions should be applied to such water rights," writes the Watermaster, Craig Wilson.

If flow standards are revised to modify the amount of stored water that must be released, it would make it more difficult for the Projects to meet both the revised flow standards and delivery obligations. Requiring other diverters to help achieve the standards increases the likelihood they will be met, and curtailing diversions by adding Term 91 conditions is a logical way to help ensure compliance with the standards, Mr. Wilson argues in the report. Furthermore, maintaining flows is crucial to the Delta, and if revisions to the Bay Delta Water Quality Control Plan result in revised Delta inflow and outflow standards, a question that must be addressed is where the water needed to meet those standards will come from. "Expansion of such efforts would be one way to address the question of where water will come from to meet revised flow requirements. Greater compliance with curtailment requirements should also be implemented," writes Mr. Wilson.

Expanding Term 91 provisions to include more diverters would encourage other efforts for more efficient water use in the watershed, such as increasing water storage, improving the efficiency of water conveyance facilities, or encouraging voluntary conservation, Mr. Wilson writes. Additionally, the report further argues that similar requirements should be imposed on permits and licenses on any stream with a reservoir where the operator is required to release or bypass stored water in order to meet flow requirements downstream.

Watermaster Craig Wilson recognizes that adding a stored water bypass requirement to Delta watershed water right holders presents practical problems which must be addressed; in the report, he recommends that the requirements to bypass the stored water be implemented in a way that respects the priority dates of the water rights and suggests a procedure for doing so.

The report concludes that stored water bypass requirements, such as Term 91, serve a valid purpose and the program should be expanded to include more water right holders, as well as be imposed on all watercourses which have upstream reservoirs releasing stored water to meet flow requirements downstream.

MORE:

[Click here to read the report, Term 91: Stored Water Bypass Requirements](#)

[Click here to visit the Delta Watermaster's webpage.](#)

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I work a part time schedule (M 7:30a - 4:00p, T - F 7:30 - 2:00p)

----- Forwarded by Erin Foresman/R9/USEPA/US on 12/27/2012 11:44 AM -----

From: Maven's Notebook <maven@mavensnotebook.com>

To: Erin Foresman/R9/USEPA/US@EPA,

Date: 12/21/2012 11:40 AM

Subject: The Delta Stewardship Council meeting highlights: How much will covered actions cost, the development of the Delta Science Plan, plus the Watermaster's report on Term 91

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Maven's Notebook

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Maven's Minutes: The Delta Stewardship Council discusses next steps for the Delta Plan, the Rulemaking Process, near term actions and the Lower Yolo Ranch Habitat Restoration Project

Coverage of the Delta Stewardship Council's December 13th meeting

As the Delta Stewardship Council and staff shift their focus from building and developing the Delta Plan to implementing the Plan, questions arise about the economic and fiscal impacts of the proposed new regulations, near-term actions are discussed, and the Council takes a look at the Lower Yolo Ranch Habitat Restoration Project in this first of two-part coverage from the December 13th meeting of the Delta Stewardship Council .

"We, as staff, are very excited," began Delta Plan Manager Cindy Messer in her update to the Council on the schedule for the Delta Plan and its EIR. "We see the process evolving; we see it coming almost full circle. We see a plan that once it is finalized and adopted by this Council is going to do a series of very significant things. When it is adopted and we begin implementing the Plan, it is going to create a single blueprint for state and local agencies and their actions in the Delta that will help achieve the Coequal goals ," she said. [Click here to read this article.](#)

Maven's Minutes: Developing the Delta Science Plan: Defining the problems, proposing solutions

Coverage of the Delta Stewardship Council's December 13th meeting, continued

Discussion of the development of the Delta Science Plan continued at the December 13th meeting of the Delta Stewardship Council as Dr. Peter Goodwin, Lead Scientist, updated the Council members on the progress of the science plan.

At the November meeting of the Delta Stewardship Council , the direction from Council members was to define the problems that the Science Plan is intended to solve, along with proposed solutions. Council members also asked for a description of how the science-policy interface will work to implement all the steps of Adaptive Management , began Dr. Goodwin. So what's the Delta Science Plan about? Dr. Goodwin explained [Click here to read this article.](#)

Term 91 and Delta flow requirements

The State Water Resources Control Board (State Water Board) is required by law to establish flow and water quality objectives that ensure the reasonable protection of beneficial uses. With the revision of the Bay-Delta Water Quality Control Plan underway, and even the State Water Board itself admitting in a 2010 report, "The best available science suggests that current flows are insufficient to protect public trust resources," it appears highly likely that the State Water Board will modify the Delta's flow requirements. Where will that water come from? Craig Wilson, Delta Watermaster, suggests a potential solution, at least in part, in his latest informational report, Term 91: Stored Water Bypass Requirements. [Click here to read this article.](#)

With the Delta Plan and the Bay Delta Conservation Plan nearing the final planning stages and implementation soon to begin, you won't want to miss the action ...

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